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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/827,299

04/20/2004

Robert C. Holcomb

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05/23/2006

LITMAN LAW OFFICES, LTD

PO BOX 15035

CRYSTAL CITY STATION

ARLINGTON, VA 22215

EXAMINER

PATTERSON, MARIE D

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 05/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,299

Applicant(s)

HOLCOMB, ROBERT C.

Examiner

Marie Patterson

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3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/20/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Applicant's election with traverse of Group I in the reply filed on 4/12/06 is acknowledged. The traversal is on the ground(s) that applicant is entitled to a reasonable number of related embodiments falling within the scope of a generic inventive concept and it would not be a serious burden on the Examiner. This is not found persuasive because the arguments appear to be arguments related to a species election and there has been no species election required, the Examiner has issued a restriction between different categories of invention and the different categories (Group I and II) do require different fields of search and would be a burden on the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 19 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/12/06.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 11, and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bible (4779360).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bible.

Bible shows a shoe comprising a rubber elastic upper (14), and a rubber sole (22) with traction material (30) embedded therein substantially as claimed except for the exact rubber for the sole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use latex rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bible as applied to claims 3, 4, and 6 above, and further in view of Simonson (1999214).

Bible shows a shoe substantially as claimed except for lateral chain segments. Simonson teaches providing lateral chain segments (4) in a sole to increase traction. It would have been obvious to provide lateral chain segments as taught by Simonson in the shoe of Bible to increase traction.

8. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bible in view of Massengale .

Bible shows a shoe substantially as claimed except for the exact upper configuration. Massengale teaches the well known closure arrangement comprising a slit with overlapping edges and a strap with hook and loop fastening elements thereon (see figures 1, 3, and 4). It would have been obvious to provide an upper configuration as taught by Massengale in the footwear of Bible to make the shoe easier to put on and take off and to provide a secure attachment of the footwear.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 7-9 above, and further in view of either Maples (5024008) or Plotkin (4967491).

Bible as modified above shows a shoe substantially as claimed except for providing the footwear in combination with a bag. Either Maples or Plotkin teaches the well known and conventional practice of providing a bag in combination with overshoes (see column 3 line 58 or 50). It would have been obvious to provide a bag as is conventional and taught by Maples or Plotkin with the footwear of Bible as modified above to facilitate carrying the footwear when not in use.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bible in view of either Maples (5024008) or Plotkin (4967491).

Bible shows a shoe substantially as claimed except for providing the footwear in combination with a bag. Either Maples or Plotkin teaches the well known and conventional practice of providing a bag in combination with overshoes (see column 3 line 58 or 50). It would have been obvious to provide a bag as is conventional and

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taught by Maples or Plotkin with the footwear of Bible to facilitate carrying the footwear when not in use.

11. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bible as applied to claims 3, 4, and 6 above, and further in view of Massengale .

Bible shows a shoe substantially as claimed except for the exact upper configuration. Massengale teaches the well known closure arrangement comprising a slit with overlapping edges and a strap with hook and loop fastening elements thereon (see figures 1, 3, and 4). It would have been obvious to provide an upper configuration as taught by Massengale in the footwear of Bible to make the shoe easier to put on and take off and to provide a secure attachment of the footwear.

12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 14-17 above, and further in view of either Maples (5024008) or Plotkin (4967491).

Bible as modified above shows a shoe substantially as claimed except for providing the footwear in combination with a bag. Either Maples or Plotkin teaches the well known and conventional practice of providing a bag in combination with overshoes (see column 3 line 58 or 50). It would have been obvious to provide a bag as is conventional and taught by Maples or Plotkin with the footwear of Bible as modified above to facilitate carrying the footwear when not in use.

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1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (572)272-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson
Primary Examiner
Art Unit 3728